

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 2034

February 21, 2014

**SUMMARY OF BILL:** Subjects dyed diesel fuel used to power railroad locomotives to the 17 cents per gallon diesel tax and requires all proceeds to be deposited in the Transportation Equity Trust Fund and used solely for the benefit and operation of railway-related program and activities. Exempts from the sales and use tax the sale or use of diesel fuel sold to or used by a common carrier that is actually used in the operation of locomotives or railcars for the carriage of persons or property in interstate commerce.

**ESTIMATED FISCAL IMPACT:**

**Other Fiscal Impact – To the extent the judgment by the U.S. District Court for the Middle District of Tennessee, preventing the Department of Revenue from collecting the sales tax previously paid by the plaintiff railroads, is overturned and the Department is allowed to continue collecting the state sales tax imposed under current law, this bill will result in a decrease in state revenue to the Transportation Equity Trust Fund of \$702,000 in FY13-14 and \$4,211,900 in FY14-15 and subsequent years, and a decrease in state revenue to the General Fund of \$626,400 in FY13-14 and \$3,758,300 in FY14-15 and subsequent years.**

**However, to the extent the judgment is upheld and the Department is prohibited from collecting the state sales tax imposed under current law, this bill will result in an increase in state revenue to the Transportation Equity Trust Fund of \$1,594,800 in FY13-14 and \$9,568,700 in FY14-15 and subsequent years.**

Assumptions:

- Pursuant to Tenn. Code. Ann. § 67-6-103(b)(1), all collections from the seven percent state sales and use tax rate imposed on the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation, railways, or water carriers are to be deposited in the Transportation Equity Trust Fund.

- Pursuant to Tenn. Code. Ann. § 67-6-103(c)(1) and (2), all revenue generated from the increase in the rate of state sales and use tax , from 5.5 percent to 6.0 percent (effective April 1, 1992), or from 6.0 percent to 7.0 percent (effective July 15, 2002), must be deposited in the General Fund.
- Therefore, collections from the remaining 5.5 percent sales and use tax imposed on the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation, railways, or water carriers are currently deposited in the Transportation Equity Trust Fund.
- According to the Department of Revenue (DOR), the total state sales tax reported for railroad fuel was \$17,538,961 in FY12-13, of which \$13,780,612 [ $(\$17,538,961 / 7.0\%) \times 5.5\%$ ] was deposited in the Transportation Equity Trust Fund, and the remaining \$3,758,349 ( $\$17,538,961 - \$13,780,612$ ) was allocated to the General Fund. These numbers are assumed to remain constant under current law.
- According to DOR, the number of gallons of railroad fuel sold or purchased was 79,855,781 in FY12-13. Under this bill, only fuel used in Tennessee would be subject to the diesel tax. DOR estimates that 56,286,705 gallons were used in Tennessee in FY12-13. This number is assumed to remain constant under current law.
- Subjecting dyed diesel fuel used to power railroad locomotives to the 17 cents per gallon diesel tax and requiring all proceeds to be deposited in the Transportation Equity Trust Fund would result in recurring revenue to the Fund of \$9,568,740 ( $56,286,705 \text{ gallons} \times \$0.17 \text{ per gallon}$ ).
- On August 27, 2013, Class 1 railroads obtained a judgment in the United States District Court for the Middle District of Tennessee, which resulted in an injunction forcing the DOR to cease collecting the state sales tax previously paid by the plaintiff railroads. The Department has appealed this decision and the case is currently pending in the U.S. Court of Appeals for the Sixth Circuit.
- To the extent the judgment by the District Court is overturned and the Department is allowed to continue collecting the state sales tax imposed under current law, this bill will result in a recurring decrease in state revenue of \$4,211,872 to the Transportation Equity Trust Fund ( $\$13,780,612 - \$9,568,740$ ), and a recurring decrease in state revenue of \$3,758,349 to the General Fund, beginning with FY14-15. This bill is effective upon becoming law; for the purpose of the fiscal note, it is assumed this bill will become law on May 1, 2014. As a result, the first-year impact (FY13-14) is estimated to be one-sixth of the full-year impact, resulting in a decrease in state revenue to the Transportation Equity Trust Fund of \$701,979 ( $\$4,211,872 / 6$ ), and a decrease in state revenue to the General Fund of \$626,392 ( $\$3,758,349 / 6$ ).
- To the extent that the judgment is upheld and the Department is prohibited from collecting the state sales tax imposed under current law, this bill will result in a recurring increase in state revenue of \$9,568,740 to the Transportation Equity Trust Fund, beginning with FY14-15. The first-year impact (FY13-14), assuming the bill becomes law on May 1, 2014, is estimated to be an increase in state revenue to the Transportation Equity Trust Fund of \$1,594,790 ( $\$9,568,740 / 6$ ).

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Lucian D. Geise', written in a cursive style.

Lucian D. Geise, Executive Director

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